

3/7/77
in session file

March 31, 1977

Lloyd M. Price, Commissioner
Department of Revenue Administration
19 Pillsbury Street
Concord, New Hampshire 03301

Dear Commissioner Price:

By letter dated April 10, 1974 you asked whether the portion of a dividend which is labeled return of capital by a corporation but which is in fact attributable to accelerated depreciation is taxable under RSA 77:7.

That statute provides as follows:

Capital Distribution. No distribution of capital, whether in liquidation or otherwise, shall be taxable as income, but accumulated profits shall not be regarded as capital.

You have informed me that the Department of Revenue Administration, as a result of a ruling by the former State Tax Commission, presently taxes as income that portion of a return of capital which includes accelerated depreciation on the grounds that it is not a direct return of capital. Although this practice is inconsistent with the position taken by the Internal Revenue Service, which recognizes the corporation's label as a return of capital, there is nothing which requires a state agency in the administration of state tax laws to follow federal practices. Rather, the Commission, as a matter of policy, may define what it considers a distribution of capital within the meaning of RSA 77:8.

Very truly yours,

Deborah J. Cooper
Attorney
Division of Legal Counsel

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